

**EMPLOYER STATUS DETERMINATION - RECONSIDERATION
SHORT LINES, INCORPORATED**

Mr. Dennis T. Prince, President of Short Lines, Inc. (SLI), has requested reconsideration of the January 27, 1993, decision of the Board holding that company to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts with creditable service from November 25, 1987, the date it began operations. Coverage of SLI is based on its being under common control with Tennessee Southern Railroad Co., Inc., an employer under the Acts, and its performing services for Tennessee Southern.

Mr. Prince does not request reconsideration of the determination that SLI is an employer covered under the Acts. He requests reconsideration of the effective date of coverage and requests a waiver of "any prior taxes, penalties, or interest for the period prior to April 1, 1993, the first quarter following the decision." Mr. Prince states that:

When Short Lines, Inc. was created the purpose of the company was to provide support services to two operating railroads, Georgia Northeastern Railroad Company, Inc., which was subsequently sold as of August 1, 1990, and Tennessee Southern Railroad Co., Inc. and to pursue other options such as warehousing, intermodal freight and other business opportunities. The original list of principal officers of SLI and Tennessee Southern Railroad Company, Inc. was as follows:

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|----------------------|----------------|
| G. Richard Abernathy | President |
| Dennis T. Prince | Vice President |
| Donald S. Denbo | Treasurer |
| Samuel B. Garner | Secretary |
| Theodore D. Lipman | Board Chairman |

Mr. Abernathy had the responsibility of running the railroads with SLI doing the payroll, contract review and accounting functions for such. Mr. Abernathy was paid for his services by the Tennessee Southern Railroad Co., Inc. with all associated payroll taxes paid from that company. It was never the intention for myself, the one employee of SLI, to become actively involved in the operation of the railroad, but [that] became necessary when Mr. Abernathy resigned as President of Tennessee Southern Railroad and SLI and subsequently sold his stock to me on December 20, 1991.

To this date, I am also an employee of Denbo Scrap Materials, Inc. a scrap processing business from which the majority of my annual income is derived.

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Short Lines, Incorporated

Mr. Prince advises that SLI was paying into the state unemployment insurance program of Tennessee and that there have been no claims filed under the Railroad Unemployment Insurance Act based upon employment with SLI.

The information submitted by Mr. Prince provides no basis for adjustment in the initial date of coverage under the Railroad Retirement Act.

Moreover, taxes imposed in connection with the railroad retirement system are administered by the Internal Revenue Service under the authority of the Railroad Retirement Tax Act. The Board has no authority to waive or otherwise adjust the collection of taxes under that Act.

However, based on the foregoing information the Board finds that it would be appropriate to hold SLI to be a covered employer under the Railroad Unemployment Insurance Act prospectively from the date of the Board's initial ruling in this case. No benefits have been paid based on employment with SLI and SLI has paid taxes into the appropriate state unemployment system. Finally, there is no evidence that SLI did not believe in good faith that it was subject to the Federal/State unemployment compensation system rather than the RUIA.

Based on the foregoing, the Board's decision dated January 27, 1993, is modified to change the effective date of coverage under the RUIA to February 1, 1993, the first day of the first month following the Board's initial decision.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever